REMARKS

   This amendment is being filed as a response to the Final Office Action of July 30, 2007. The due date for response extends to October 30, 2007. Reconsideration is respectfully requested in view of these clarifying amendments and remarks.

Rejections under Section 112, Second Paragraph

   Claims 1-6, and 12-17 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "library call" is deemed vague and indefinite.

   Applicants respectfully disagree and assert that the term "library call" would be clearly understood by one skilled in the art. The Specification as filed gives examples of "library calls", such as "[w]henever application module 122a makes a standard socket library call, e.g., bind(), connect(), and closesocket(),Winsockproxy.dll 122b intercepts the calls and communicates with IP packet tunneling driver 122d in order to register/de-register a port number and protocol type that the application module allocates" (Specification, page 12, lines 18-21 - emphasis added). Of course, the foregoing citations are set forth for illustrative purposes only, and should not be construed as limiting in any manner.

   Furthermore, the Examiner has understood the meaning of the term under the 102 rejection where he points to "[an] interception of TCP request call from an application" (Office Action, Page 8, 6th paragraph) from Eisenberg to make a prior art showing of applicant's "intercepting a library call."

   Accordingly, the Office is requested to withdraw the rejections of the claims under Section 112, second paragraph.

Rejections under 35 USC 101

   Claims 12-22 were rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. Specifically, the Examiner asserted that the claims are directed toward a computer program instructions recorded on a computer readable medium, wherein the computer readable medium can be an electromagnetic carrier wave or transmission signal over a distributed network.. In order to move prosecution forward, the Applicants have amended independent Claims 12 and 18 to claim "[a] tangible computer readable medium." Accordingly, the Examiner's rejections are rendered moot.

Double Patenting Rejections

Applicants acknowledge the outstanding rejection of Claims 1-26 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-26 of copending Application No. 10/990274 in view of Eisenberg et al. (US Publication No. 2006/0168321 A1). Upon being notified that the aforementioned claims are otherwise in condition for allowance, Applicants will consider the filing of a terminal disclaimer to address the double patenting rejection.

Rejections under 35 USC § 102

Claims 1-3, 5-9, 12-14, 16-21, 23, and 25-30 were rejected under 35 USC 102(e) as being anticipated by Eisenberg et al. (US Publication No. 2006/0168321 A1). This rejection is traversed, especially in view of the amendments made hereinabove to each of the independent claims. Specifically, applicant has amended the independent claims to at least substantially include the subject matter of former dependent Claim 4. Accordingly, Applicants request withdrawal of this rejection for at least these reasons.

Rejections under 35 USC § 103(A)

Claims 4, 11, 15, 22 and 24 were rejected under 35 U.S.C. 103(a) as being unpatentable over Eisenberg, in view of Philbrick et al. (U.S. Publication No. 2007/0118665 A1). Applicants respectfully request reconsideration of these rejections in light of the amendments and arguments contained herein.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

The independent claims (claims 1, 7, 12, 18, 23, and 27) have been amended to at least substantially include the subject matter of former dependent Claim 4. They include the features of adding a TCP/IP header over a pre-existing header of a data packet related to the identification data, where the method operation of adding a TCP/IP header includes inserting a flag into a lower byte of a window size field of the TCP/IP header, and inserting a checksum

into an upper byte of the window size field of the TCP/IP header (see this or similar, but not necessarily identical language in the independent claims).

The Examiner has asserted that Philbrick, in Fig. 3, and page 3, paragraph [0032] (excerpted below), illustrates inserting a flag into a lower byte of a window size field of the TCP/IP header; and inserting a checksum into an upper byte of the window size field of the TCP/IP header).

> "[0032] Finite state machine 36 reads <u>template header</u> 35 from SRAM 32. <u>Template header 35 includes various TCP and IP fields that processor 28 and finite state machine 36 fill in</u>. In one embodiment (see FIG. 3), these TCP and IP fields include a sixteen-bit IP Identification field, a sixteen-bit IP header checksum field (where the IP header includes the IP ID), a sixteen-bit IP total length field that indicates the total length of the IP datagram, a thirty-two bit TCP sequence number field, a thirty-two bit ACK number field, a sixteen-bit TCP window size field, a twelve-bit TCP flag field, and a sixteen-bit TCP checksum field. <u>Finite state machine 36 uses information about the connection and the packet received (such as, for example, the TCP source and destination ports and the IP source and destination addresses) to fill in the TCP and IP fields in template header 35</u>. Template header 35 as stored in SRAM 32 may contain partial checksums and/or partial length values that processor 28 uses to determine final checksum values and/or final length values that are filled in. In some embodiments, template header 35 as stored in SRAM 32 already includes the correct TCP source and destination ports and IP source and destination addresses." (Paragraph [0032]- emphasis added).

Applicants respectfully disagree. Figure 3 merely shows a template for TCP, IP and Mac headers, and the excerpt from Philbrick relied upon by the Examiner merely teaches that processor 28 and finite state machines fill in the TCP and IP fields in the template. However, merely teaching filling in TCP and IP headers, as in Philbrick, does not anticipate Applicants' specific technique of inserting a flag into a lower byte of the window size field, and inserting a checksum in the upper byte of the window size field. The method of Philbrick fills in a window size value in the window size field, and not a flag and a checksum as Applicants claim. There is nothing in Philbrick that can be reasonably interpreted as dividing the window size field in two parts and filling them with a flag and a checksum.

Applicants respectfully assert that at least the third element of the prima facie case of obviousness has not been met, since the prior art fails to teach or suggest all of the claim limitations, as noted above. In view of the foregoing, the Applicants respectfully request that the § 102 and § 103 rejections be withdrawn. The dependent claims are submitted to be patentable for at least the same reasons the independent claims are believed to be patentable. The Applicants therefore respectfully request reconsideration and allowance of the pending claims.

Claims 31 and 32 have been added. Claim 31 further clarifies that if the flag and checksum are set, then it is a connectionless TCP/IP packet. Claim 32 further distinguishes

Applicant's claims from the references by describing the use of the SYN and SYN+ACK flags in the inserted TCP/IP header by client and server, to allow the packet to pass through a firewall without having to wait for a full stateful TCP connection to be set up at the firewall.

In view of the foregoing, Applicants respectfully submit that all of the pending claims are in condition for allowance. A notice of allowance is therefore respectfully requested. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach Applicant's attorney Michael L. Gencarella (44,703) at 408-774-6921.

Respectfully submitted,

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